

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. _____
FM Broadcast Stations) RM - _____
(Beaumont and)
Mont Belvieu, Texas))

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

PETITION FOR RULE MAKING

Cumulus Licensing LLC ("Cumulus"), licensee of KRWP(FM), Beaumont, Texas, by its counsel, hereby submits this Petition for Rule Making, which proposes to delete Channel 248C from Beaumont, Texas and allot Channel 248C to Mont Belvieu, Texas as that community's first local service. If this Petition is granted, Cumulus will file an application for Channel 248C at Mont Belvieu and construct the facilities to the extent necessary to comply with the authorization. No change to the physical facilities of KRWP are necessary in order to change the station's community of license. The following table summarizes the changes requested in this Petition:

City	Channel	
	Existing	Proposed
Beaumont, Texas	231C1, 236C1, 248C, 273C2, 300C	231C1, 236C1, 273C2, 300C
Mont Belvieu, Texas	---	248C

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I. Technical Analysis

1. As demonstrated in the Technical Exhibit, Channel 248C can be allotted to Mont Belvieu at KRWP's current coordinates of 29-41-52 North Latitude, 94-24-09 West Longitude

consistent with Section 73.207 of the Commission's Rules with respect to all existing and proposed domestic allotments and facilities. See Figure 1. A 70 dBu signal can be provided to Mont Belvieu from the current reference coordinates. See Figure 2. Because KRWP's facilities will not be relocated, there will be no change in population and area served.

II. Change in Community of License

2. Cumulus desires to change the community of license of KRWP from Beaumont to Mont Belvieu under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recons. granted in part*, 5 FCC Rcd 7094 (1990). There, the Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities. These criteria are met here. First, because the facilities are identical, the proposed use of Channel 248C at Mont Belvieu is mutually exclusive with the current use of Channel 248C at Beaumont. See Figure 1. Second, Beaumont will not be deprived of its only local service because it will continue to be served by 6 FM stations and 4 AM stations. Third, the provision of a first local service at Mont Belvieu (2000 U.S. Census population 2,324) under Priority 3 will result in a preferential arrangement of allotments over the retention of an 11th local service at Beaumont (2000 U.S. Census population 113,866) under Priority 4. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

3. Mont Belvieu is not located in an Urbanized Area. The proposed 70 dBu contour of KRWP will cover over 50 percent of the Galveston, Texas City, Beaumont, and Port Arthur

Urbanized Areas. However, because KRWP as it is currently sited covers over 50 percent of the Galveston, Texas City, Beaumont, and Port Arthur Urbanized Areas, no *Tuck* showing is necessary with respect to these Urbanized Areas. *See, e.g., Dayton, Incline Village and Reno, Nevada*, 15 FCC Rcd 22461, 22462 (2000); *St. Maries, Idaho and Spokane, Washington*, 14 FCC Rcd 17012, 17019 (1999); *Boulder and Lafayette, Colorado*, 12 FCC Rcd 583, 584 (1997). Nevertheless, a *Tuck* showing is provided. *See Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) (“*Tuck*”).

4. In making the determination whether to award a community a first local service preference, the Commission will consider (1) the extent to which the station will provide service to the entire Urbanized Area, (2) the relative populations and proximity of the suburban and central city, and, most importantly, (3) the independence of the suburban community. *Tuck*, 3 FCC Rcd at 5377-78. In this case, the KRWP 70 dBu contour currently encompasses over 50 percent of the Galveston, Texas City, Beaumont, and Port Arthur Urbanized Areas and will continue to do so following the community of license change. Mont Belvieu’s population (2000 U.S. Census 2,324) is 4.1 percent of that of Galveston (2000 U.S. Census 57,247), 5.6 percent of that of Texas City (2000 U.S. Census 41,521), 2 percent of that of Beaumont (2000 U.S. Census 113,866), and 4 percent of that of Port Arthur (2000 U.S. Census 57,755). Mont Belvieu is located 64.37 kilometers from Galveston, 90.32 kilometers from Texas City, 51.34 kilometers from Beaumont, and 76.17 kilometers from Port Arthur. These figures are similar to those of other suburban communities granted a first local preference. *See, e.g., Old Fort, Fletcher, and Asheville, North Carolina; Surgoinsville, Tennessee, and Augusta, Georgia*, 18 FCC Rcd 12181, 12182 (2003) (Fletcher’s population is 6.1% of that of Asheville, and Fletcher is located 17 kilometers from Asheville); *Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576, 3577 (1999)

(Bryant's population is 3% of that of Little Rock, and Bryant is located 20 miles from Little Rock). Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of independence. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10355 (1995). The following analysis of the eight *Tuck* factors demonstrates the independence of Mont Belvieu from Galveston, Texas City, Beaumont, and Port Arthur.

(1) *Extent to which the residents of Mont Belvieu work in Mont Belvieu.*

According to 2000 Census figures, 201 of the 1,078 employed individuals in Mont Belvieu, or 18.6%, work at their place of residence. *See* Exhibit 2. This percentage compares favorably with other independent communities. *See, e.g., Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001), *application for review pending* (11.3% of working-age residents worked in community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996) (13% of Gilbert's working population actually worked in Gilbert).

(2) *Newspapers and other media that cover Mont Belvieu's local needs and interests.* The *Barbers Hill Press* is a regional paper that serves the communities of Mont Belvieu and Dayton, Texas. It is published weekly and contains local articles on Mont Belvieu.

(3) *Community leaders and residents perceive Mont Belvieu as being separate from the surrounding Urbanized Areas.* Mont Belvieu is located on a salt dome in northwestern Chambers County. The area's first permanent settler was Amos Barber and the community that surrounded his home was known as Barbers Hill. In 1890 the community changed its name to Mont Belvieu with the opening of the first post office. In the late 1920s a sizeable oil field was discovered at Mont Belvieu, which lead

to its rapid growth as an oil town. The discovery of oil brought transportation and businesses to Mont Belvieu. Mont Belvieu was incorporated in 1970 and today it continues to be one of the worlds leading petroleum supporting cities. It is known as the “Liquid Petroleum Capitol of the World” because it is home to numerous petrochemical refineries, plants, and storage facilities. *See Exhibit 2.*

(4) ***Mont Belvieu has its own local government and elected officials.*** Mont Belvieu operates independently of any other government and is administered by a mayor and city council. The Mont Belvieu City Hall is located at 11607 Eagle Drive and the City of Mont Belvieu maintains a website at <www.montbelvieu.net>. The agendas and minutes of the city council meetings are posted on the website, and residents of Mont Belvieu can locate information about all of the services offered by Mont Belvieu on the website. *See Exhibit 2.*

The City of Mont Belvieu provides municipal services to the residents of Mont Belvieu through the following departments: administration, public safety, utilities, parks and recreation, and planning and inspection. The administration department is composed of the city administrator, the city secretary, and the finance department. The public safety department is composed of the police department, emergency medical services, fire department, municipal court, and animal control. The utilities department provides water, waste water and sanitation services to the City of Mont Belvieu. The parks and recreation department operates the parks and museums in Mont Belvieu, including the recently completed golf course and recreational center at Eagle Pointe Park. The planning and inspection department performs health inspections, issues building permits, and enforces the zoning ordinances. *See Exhibit 2.*

(5) ***Mont Belvieu has a zip code.*** The zip code assigned exclusively to Mont Belvieu is 77580, and the U.S. Postal Service operates an office in Mont Belvieu at 16043 Eagle Drive. While Mont Belvieu does not have a separate telephone directory, phone numbers for the City of Mont Belvieu are listed on the City of Mont Belvieu website, <www.montbelvieu.net>, and phone numbers for businesses in Mont Belvieu are listed on the West Chambers County Chamber of Commerce website, <www.usachamber.com/westChambersTx/chamber.asp>. See Exhibit 2.

(6) ***Mont Belvieu has its own commercial establishments and health care providers.*** Mont Belvieu is home to a variety of businesses and commercial establishments. The West Chambers County Chamber of Commerce, located in Mont Belvieu, provides a listing of businesses located in Mont Belvieu and serving the community of Mont Belvieu. As discussed above, Mont Belvieu is home to a number of petrochemical refineries, plants and storage facilities. For example, Mont Belvieu Storage Partners, L.P. operates the Mont Belvieu storage facility in Mont Belvieu. This facility is the largest LPG storage complex in the United States and provides substantial capacity and flexibility in the transportation, terminaling and storage of petrochemicals. In addition to Mont Belvieu Storage Partners, a number of local businesses identify with the community by using "Mont Belvieu" in their name, including the Dairy Queen of Mont Belvieu, Mont Belvieu Apartments, Mont Belvieu Auto Supplies, ExxonMobil Mont Belvieu Plastics Plant, and Valero Mont Belvieu Storage and Distribution System. Other Mont Belvieu retail and commercial businesses include Trinity Homes, Thrif-tee Food Center, Speer Properties, SouthTrust Bank, G. R. Hamilton Insurance, Enterprise

Products Partners, Barbers Hill Banking Center, Clayton Realtors, Creative Spaces Design Center, and Scanadian Inn. *See Exhibit 2.*

Health care and dental services are provided by a number of sole practitioners. Mont Belvieu is also home to a number of religious organizations, including Holy Trinity Catholic Church, Maranatha Church, Mt. Zion Baptist Church, Old River Assembly of God Church, First Baptist Church of Mont Belvieu, and First United Methodist Church of Mont Belvieu. *See Exhibit 2.*

(7) ***Mont Belvieu is a separate and distinct advertising market.*** The *Barbers Hill Press* provides the businesses of Mont Belvieu with a place to advertise to the residents of Mont Belvieu without relying on the Galveston, Texas City, Beaumont, and Port Arthur advertising markets.

(8) ***Mont Belvieu has its own schools, library, police protection and fire protection.*** The Barbers Hill Independent School District, located in Mont Belvieu, administers the following schools in Mont Belvieu for the residents of Mont Belvieu: Barbers Hill High School, Barbers Hill Middle School, Barbers Hill Intermediate School, Barbers Hill Elementary School, and Barbers Hill Primary School. The West Chambers County Branch Library is located in Mont Belvieu. *See Exhibit 2.*

The Mont Belvieu Police Department is comprised of the chief, captain, patrol lieutenant, detective, five patrol officers, a school resource officer, and six civilian support personnel. The police department has a number of departments that serve the residents of Mont Belvieu, including the patrol division, the criminal investigation division, and the communications division. Mont Belvieu also has its own fire department. In addition to these public safety organizations, the Mutual Aid Mont

Belvieu organization is dedicated to providing emergency response assistance during emergencies. The organization is composed of industry leaders, public safety officials, and local government leaders. See Exhibit 2.

5. Mont Belvieu is clearly independent of Galveston, Texas City, Beaumont, and Port Arthur and therefore deserving of a first local service. As demonstrated above, Mont Belvieu, while not required to meet the *Tuck* criteria, nevertheless satisfies all of the independent community indicia required by *Tuck*.

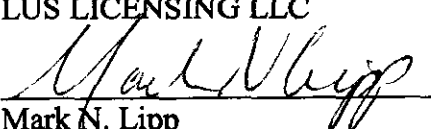
III. CONCLUSION

For the foregoing reasons the Commission should delete Channel 248C at Beaumont, Texas and allot Channel 248C at Mont Belvieu, Texas as that community's first local service. Cumulus reiterates that if the Commission allots Channel 248C at Mont Belvieu as that community's first local service, it will file an application for Channel 248C at Mont Belvieu and will construct the facilities as authorized. The Commission should promptly issue a Notice of Proposed Rule Making as described herein.

Respectfully submitted,

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May 24, 2004

TECHNICAL EXHIBIT

**Engineering Statement
In Support of a
Petition for Rule Making
Channel 248C (KRWP), Mont Belvieu, Texas**

General

Cumulus Licensing, LLC ("Cumulus") hereby petitions the Commission to delete channel 248C at Beaumont, Texas and allocate channel 248C at Mont Belvieu, Texas as that community's first local service. Cumulus proposes to leave KRWP at its current transmitter location.

The proposed amendment to the Table of Allotments is as follows:

<u>City</u>	<u>Current</u>	<u>Proposed</u>
Beaumont, TX	231C1, 236C1, 248C, 273C2, 300C	231C1, 236C1, 273C2 300C
Mont Belvieu, TX	-----	248C

Exhibits Explained

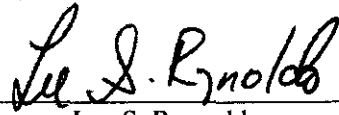
Exhibit E, Figure 1 is an allocation study showing that the proposed channel 248C at Mont Belvieu, Texas is fully spaced. Exhibit E, Figure 2 shows that the proposed allocation will provide 100% coverage of the new community of license (Mont Belvieu) from the current KRWP antenna location. It is these coordinates that Cumulus chooses to use for the purposes of this petition for rule making.

Conclusion

The instant petition proposes to provide Mont Belvieu, Texas (population 2,324 according to the 2000 US Census) its first local service. No technical changes are proposed to the station.

Beaumont will remain well served by four other commercial FM stations.

For Cumulus:



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Engineering Statement

**In Support of a
Petition for Rule Making
Channel 248C (KRWP), Mont Belvieu, Texas**

Channel 248C Allocation Study

REFERENCE		DISPLAY DATES				
29 41 52 N	CLASS = C	DATA 03-25-04				
94 24 09 W	Current Spacings	SEARCH 03-25-04				
----- Channel 248 - 97.5 MHz -----						
Call	Channel	Location	Dist	Azi	FCC	Margin

	Community of Mont Belvieu		TX 49.06	291.8		
	Reference Coordinates:					
	North Latitude: 29-51-37					
	West Longitude: 94-52-28					
KRWP	LIC	248C	Beaumont	TX	0.00	0.0 290.0 -290.00
Of no concern:						
Licensed coordinates of KRWP						
RADD	ADD	248A	Center	TX	225.57	7.6 226.0 -0.43
KBXX	LIC	250C	Houston	TX	108.09	263.1 105.0 3.09
KTHT	LIC	246C	Cleveland	TX	110.13	327.7 105.0 5.13
RADD	ADD	247A	Garwood	TX	202.44	266.1 165.0 37.44
RDEL	DEL	248C	Waco	TX	332.76	282.6 290.0 42.76
KWTXFM	CP	248C	Waco	TX	333.07	303.9 290.0 43.07
KWTXFM	LIC	248C	Waco	TX	333.07	303.9 290.0 43.07
KQLK	LIC	250C2	De Ridder	LA	152.37	47.7 105.0 47.37
KMDL	LIC	247C2	Kaplan	LA	235.63	79.9 188.0 47.63
RADD	ADD	248C2	Marlin	TX	310.11	302.3 249.0 61.11
KWRW	LIC-N	249C3	Rusk	TX	246.54	342.9 176.0 70.54
ALLO	VAC	251A	Groveton	TX	166.11	335.5 95.0 71.11

